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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 2010-201

15 **MARC WILLIAM REDE**
24835 A Torres Street
16 **Carmel, CA 93923**
Registered Nurse License No. RN 604274

A C C U S A T I O N

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about August 12, 2002, the Board of Registered Nursing issued Registered
25 Nurse License Number RN 604274 to Marc William Rede (Respondent). The Registered Nurse
26 License was in effect at all times relevant to the charges brought herein and will expire on
27 January 31, 2010, unless renewed.

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1 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
2 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
3 or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof."

6 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 REGULATORY PROVISIONS

11 9. California Code of Regulations, Title 16, section 1444, states in pertinent part:

12 "A conviction or act shall be considered to be substantially related to the qualifications,
13 functions or duties of a registered nurse if to a substantial degree it evidences the present or
14 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
15 safety, or welfare. . . ."

16 10. DRUGS

17 **Suboxone** is a brand name for **Buprenorphine**, a Schedule III controlled substance as
18 designated by Health and Safety Code section 11056(e) and a dangerous drug as designated by
19 Business and Professions Code section 4022. It is used for the treatment of pain and for opioid
20 addiction.

21 FACTUAL BACKGROUND

22 11. On or about November 22, 2008, at approximately 23:55 hours, during a traffic stop
23 by the Monterey Police Department, Respondent admitted to law enforcement that he had
24 consumed one beer around 23:00 to 23:30 hours before driving back to his residence. The officer
25 asked Respondent to perform a series of field sobriety tests. Respondent was arrested based the
26 officer's observation of Respondent's objective symptoms and on Respondent's performance on
27 the field sobriety test. After Respondent was arrested and transported to the Monterey Police
28 Department Jail, he was given a breath test. The results of that test indicated that Respondent had

1 a blood alcohol level of .16/.16. Respondent was issued Citation M198423 for driving under the
2 influence with a blood alcohol level of .08 or above, and ordered to appear in Court on January
3 21, 2009.

4 12. On or about December 21, 2008, at approximately 02:59 hours, Respondent was
5 stopped by Carmel Law Enforcement for passing the painted line limit at an intersection and for
6 having an inoperable license plate light. When the officer asked Respondent why he thought he
7 was being detained, Respondent answered that he knew that he should not be driving. The officer
8 noticed that Respondent's speech was slurred and that his eyes were red and watery. Respondent
9 admitted to the officer that he had consumed four beers at approximately 23:30 hours.
10 Respondent submitted to a field sobriety test and, based on the results of that test as well as
11 objective symptoms of intoxication, was arrested for driving under the influence. Respondent
12 submitted to two breath tests at 03:09 hours and 03:13 hours respectively. The results of those
13 two tests indicated that Respondent had a blood alcohol level of .16%. Respondent was charged
14 with driving under the influence with a blood alcohol level of 0.8 or higher and detained in the
15 Monterey jail until sober. He was issued Citation C58855 and ordered to appear in Court on
16 January 21, 2009.

17 13. On or about January 21, 2009, before the Monterey County Superior Court, in Case
18 No. MS272311A, Respondent was convicted on his plea of nolo contendere to the misdemeanor
19 violation of Vehicle Code section 23152(b) for driving under the influence of Alcohol with a 0.8
20 or higher blood alcohol count. The Court sentenced Respondent to 5 years of conditional
21 probation subject to specific terms and conditions including but not limited to: not to commit the
22 same or similar offense, submit to chemical and field sobriety tests, not to drive with
23 alcohol/drugs in his system, report and enroll in a county approved First Offender Program and to
24 file proof of enrollment by February 20, 2009. The Court also fined Respondent in the amount of
25 \$1,690.00 and further ordered to pay a restitution fine of \$100.00 and a court security fee of
26 \$20.00. Respondent was further ordered by the Court to serve 5 days in jail with a credit of two
27 days for time served.

1 14. On or about January 21, 2009, before the Monterey County Superior Court, in Case
2 No. MS272967A, Respondent was convicted on his plea of nolo contendere to the misdemeanor
3 violation of Vehicle Code section 23152(b) for driving under the influence of Alcohol with a 0.8
4 or higher blood alcohol count. The Court sentenced Respondent to 5 years of conditional
5 probation subject to specific terms and conditions including but not limited to: not to commit the
6 same or similar offense, submit to chemical and field sobriety tests, not to drive with
7 alcohol/drugs in his system, report and enroll in a county approved First Offender Program and to
8 file proof of enrollment by February 20, 2009. The Court also fined Respondent in the amount of
9 \$1,768.00 and ordered him to pay a restitution fine of \$100.00 with a court security fee of \$20.00
10 and a criminal conviction assessment fee of \$30.00. Respondent was further ordered by the Court
11 to serve 5 days in jail with a credit of two days for time served.

12 15. On or about March 25, 2009, a violation of probation petition was filed with the
13 Monterey County Superior Court in Case No. MS272967A and Respondent was ordered to
14 appear for arraignment on or about Wednesday, May 13, 2009.

15 16. On or about February 12, 2009, Respondent enrolled in a diversion program
16 authorized by the Board of Registered Nursing. On or about February 22, 2009, Respondent
17 signed the Diversion Program Preliminary Agreement wherein he certified that he fully
18 understood its content and agreed to comply with its requirements. In his monthly self report,
19 signed March 3, 2009, Respondent disclosed that he was being treated for opiate dependency with
20 Suboxone, a Schedule III controlled substance and a dangerous drug. On or about April 22, 2009,
21 Respondent's diversion program compliance monitor advised Respondent that he could not
22 establish a sobriety date in the diversion program until he completely discontinued taking
23 Suboxone.

24 17. On or around the month of May 2009, Respondent was found non-compliant with his
25 diversion program in the following instances:

26 (a) Respondent failed to check in for required random body fluid testing (RBFT) as
27 directed by his diversion program compliance monitor on April 11, 12, 13 and 17, 2009.
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1 (b) Respondent failed to check in for required random body fluid testing as directed by his
2 diversion program compliance monitor on March 1, 2009 and March 8, 2009.

3 (c) Respondent had 4 unexcused absences from his Nurse Support Group in March 2009.

4 (d) Respondent failed to send in his Month Self Report due on April 10, 2009.

5 (e) Respondent failed to send in his 12 Step Meeting card due on April 10, 2009.

6 (f) Respondent failed to send in his Preliminary Contract due by April 30, 2009.

7 18. On or about May 27, 2009, Respondent tested positive for alcohol in a random body
8 fluid test. As a result of this test result, Respondent was mandated by the diversion program to
9 enter a residential treatment program within 7 days. Respondent denied drinking alcohol. He
10 then notified the program compliance team that he was looking into residential programs and that
11 he would notify them of his enrollment by June 5, 2009. Respondent did not contact the
12 Diversion Program by June 5, 2009, or thereafter up to June 29, 2009. On or about June 29, 2009,
13 Respondent was terminated from the Board's Diversion Program as a public safety risk for non-
14 compliance with the terms and conditions of his recovery program.

15 FIRST CAUSE FOR DISCIPLINE

16 (Substantially Related Conviction)

17 19. Pursuant to sections 490 and 2761(f) of the Code, in conjunction with California
18 Code of Regulations, Title 16, section 1444, respondent's Registered Nursing license is subject to
19 disciplinary action in that respondent was convicted by his plea of "nolo contendere" in
20 Monterey Superior Court Case Nos. MS272311A and MS 272967A, for driving under the
21 influence with a blood alcohol count of 0.8 or more, as set forth in paragraphs 11, 12, 13 and 14,
22 above.

23 SECOND CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct – Use of Alcohol)

25 20. Respondent is subject to disciplinary action under section 2762(b) of the Code, in that
26 Respondent used alcohol to an extent or in a manner potentially dangerous or injurious to himself
27 or any other person as set forth in paragraphs 11 and 12, above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Conviction Involving Alcohol)

3 21. Respondent is subject to disciplinary action under section 2762(c), in that Respondent
4 was convicted of criminal offenses involving the consumption of alcohol as set forth in
5 paragraphs 13 and 14, above.

6 DISCIPLINE CONSIDERATIONS

7 22. In order to determine the degree of discipline, if any, to be imposed on Respondent,
8 Complainant alleges that on or about June 29, 2009, Respondent was terminated unsuccessfully
9 from the Board's Diversion Program for failure to comply with the provisions of the
10 rehabilitation plan and for public safety risk concerns as set forth in paragraphs 15, 16, 17 and 18,
11 above.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking Registered Nurse License Number RN 604274, issued to Marc William
16 Rede.

17 2. Ordering Marc William Rede to pay the Board of Registered Nursing the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3;

20 3. Taking such other and further action as deemed necessary and proper.

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22 DATED: 10/12/09

23 for

Stacie Berum
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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